

_____ BILL NO. _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

INTRODUCED BY _____
(Primary Sponsor)

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING A NURSE LICENSURE COMPACT; DESCRIBING THE COMPACT'S RELATIONSHIP TO OTHER LAWS; DESIGNATING A COMPACT ADMINISTRATOR FOR MONTANA; AMENDING SECTIONS 37-8-103 AND 37-8-421, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Compact adopted. This Nurse Licensure Compact is enacted and entered into with all other jurisdictions that legally join in the compact, which is, in form, substantially as provided in [sections 1 through 14].

NEW SECTION. Section 2. Findings and declaration of purpose. (1) The party states find that:

- (a) the health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;
 - (b) violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;
 - (c) the expanded mobility of nurses and the use of advanced communication technologies as part of our nation's healthcare delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;
 - (d) new practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex; and
 - (e) the current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to nurses and states.
- (2) The general purposes of this compact are to:
- (a) facilitate the states' responsibility to protect the public's health and safety;

- 1 (b) ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;
- 2 (c) facilitate the exchange of information between party states in the areas of nurse regulation,
- 3 investigation, and adverse actions;
- 4 (d) promote compliance with the laws governing the practice of nursing in each jurisdiction; and
- 5 (e) invest all party states with the authority to hold a nurse accountable for meeting all state practice laws
- 6 in the state in which the patient is located at the time that care is rendered through the mutual recognition of party
- 7 state licenses.

8

9 **NEW SECTION. Section 3. Definitions.** As used in this compact, the following definitions apply:

- 10 (1) "Adverse action" means a home state action or remote state action.
- 11 (2) "Alternative program" means a voluntary, nondisciplinary monitoring program approved by a nurse
- 12 licensing board.
- 13 (3) "Coordinated licensure information system" means an integrated process for collecting, storing, and
- 14 sharing information on nurse licensure and enforcement activities related to nurse licensure laws. The
- 15 coordinated licensure information system is administered by a nonprofit organization composed of and controlled
- 16 by state nurse licensing boards.
- 17 (4) "Current significant investigative information" means:
- 18 (a) investigative information that a licensing board, after a preliminary inquiry that includes notification
- 19 and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and,
- 20 if proved true, would indicate more than a minor infraction; or
- 21 (b) investigative information that indicates that the nurse represents an immediate threat to public health
- 22 and safety regardless of whether the nurse has been notified and had an opportunity to respond.
- 23 (5) "Home state" means the party state that is the nurse's primary state of residence.
- 24 (6) "Home state action" means any administrative, civil, equitable, or criminal action permitted by the
- 25 home state's laws, which are imposed on a nurse by the home state's licensing board or other authority, including
- 26 actions against an individual's license, such as revocation, suspension, probation, or any other action that affects
- 27 a nurse's authorization to practice.
- 28 (7) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.
- 29 (8) "Multistate licensure privilege" means current, official authority from a remote state permitting the
- 30 practice of nursing as either a registered nurse or a licensed practical nurse or vocational nurse in the party state.

1 All party states have the authority, in accordance with existing state due process law, to take actions against the
2 nurse's privilege by revoking or suspending a license, putting the nurse on probation, or taking any other action
3 that affects a nurse's authorization to practice.

4 (9) "Nurse" means a registered nurse or a licensed practical nurse or vocational nurse as those terms
5 are defined by each party state's practice laws.

6 (10) "Party state" means any state that has adopted this compact.

7 (11) "Remote state" means a party state, other than the home state, where a patient is located at the time
8 that nursing care is provided or, in the case of the practice of nursing not involving a patient, the party state where
9 the recipient of nursing practice is located.

10 (12) "Remote state action" means any administrative, civil, equitable, or criminal action permitted by a
11 remote state's laws, which are imposed on a nurse by the remote state's licensing board or other authority,
12 including:

13 (a) actions against an individual's multistate licensure privilege to practice in the remote state; and

14 (b) cease and desist orders or other injunctive or equitable orders issued by remote states or the
15 licensing boards of remote states.

16 (13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the
17 Commonwealth of Puerto Rico.

18 (14) (a) "State practice laws" means those individual party state's laws and regulations that govern the
19 practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing
20 discipline.

21 (b) The term does not include the initial qualifications for licensure or requirements necessary to obtain
22 and retain a license, except for qualifications or requirements of the home state.

23
24 **NEW SECTION. Section 4. General provisions and jurisdiction.** (1) A license to practice registered
25 nursing issued by a home state to a resident in that state is recognized by each party state as authorizing a
26 multistate licensure privilege as a registered nurse in each party state. A license to practice licensed practical
27 nursing or vocational nursing issued by a home state to a resident in that state is recognized by each party state
28 as authorizing a multistate licensure privilege to practice as a licensed practical nurse or vocational nurse in each
29 party state. To obtain or retain a license, an applicant must meet the home state's qualifications for licensure and
30 licensure renewal as well as all other applicable state laws.

1 (2) (a) A party state may, in accordance with state due process laws, limit or revoke the multistate
2 licensure privilege of any nurse to practice in that party state and may take any other action under applicable state
3 laws necessary to protect the health and safety of the state's citizens.

4 (b) If a party state takes an action necessary to protect the health and safety of its citizens, the party
5 state shall promptly notify the administrator of the coordinated licensure information system.

6 (c) The administrator of the coordinated licensure information system shall promptly notify the home state
7 of any action under this section by remote states.

8 (3) Every nurse practicing in a party state shall comply with the state practice laws of the state in which
9 the patient is located at the time that care is rendered. In addition, the practice of nursing is not limited to patient
10 care but includes all nursing practice as defined by the state practice laws of a party state. The practice of nursing
11 subjects a nurse to the jurisdiction of the licensing board and the courts, as well as the laws, in that party state.

12 (4) This compact does not affect additional requirements imposed by states for advanced practice
13 registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party
14 state must be recognized by other party states as a license to practice registered nursing if a license is required
15 by state law as a precondition of qualifying for advanced practice registered nurse authorization.

16 (5) An individual not residing in a party state shall continue to be able to apply for nurse licensure as
17 provided for under the laws of each party state. However, the license granted to these individuals will not be
18 recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that
19 state.

20
21 **NEW SECTION. Section 5. Applications for licensure in party state.** (1) Upon application for a
22 license, the licensing board in a party state shall ascertain, through the coordinated licensure information system,
23 whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are
24 any restrictions on the multistate licensure privilege, and whether any other adverse action in any state has been
25 taken against the license.

26 (2) A nurse in a party state shall hold licensure in only one party state at a time, issued by the home
27 state.

28 (3) A nurse who intends to change the nurse's primary state of residence may apply for licensure in the
29 new home state in advance of a change of the primary state of residence. However, new licenses will not be
30 issued by a party state until after a nurse provides evidence of change in the primary state of residence

1 satisfactory to the new home state's licensing board.

2 (4) When a nurse changes a primary state of residence by moving:

3 (a) between two party states and obtains a license from the new home state, the license from the former
4 home state is no longer valid;

5 (b) from a nonparty state to a party state and obtains a license from the new home state, the individual
6 state license issued by the nonparty state is not affected and remains in full force if so provided by the laws of
7 the nonparty state;

8 (c) from a party state to a nonparty state, the license issued by the prior home state converts to an
9 individual state license, valid only in the former home state, without the multistate licensure privilege to practice
10 in other party states.

11
12 **NEW SECTION. Section 6. Adverse actions.** In addition to the general provisions in [section 4], the
13 following provisions of this section apply:

14 (1) The licensing board of a remote state shall promptly report to the administrator of the coordinated
15 licensure information system any remote state action, including the factual and legal basis for the remote state
16 action, if known. The licensing board of a remote state shall also promptly report any current significant
17 investigative information yet to result in a remote state action. The administrator of the coordinated licensure
18 information system shall promptly notify the home state of any remote state action reports.

19 (2) The licensing board of a party state has the authority to complete any pending investigation for a
20 nurse who changes a primary state of residence during the course of the investigation. The licensing board of
21 a party state also has the authority to take appropriate action and shall promptly report the conclusions of an
22 investigation to the administrator of the coordinated licensure information system. The administrator of the
23 coordinated licensure information system shall promptly notify the new home state of any action taken under this
24 subsection.

25 (3) A remote state may take adverse action affecting the multistate licensure privilege to practice within
26 that party state. However, only the home state has the power to impose adverse action against the license issued
27 by the home state.

28 (4) For purposes of imposing adverse action, the licensing board of the home state shall give the same
29 priority and effect to reported conduct received from a remote state as it would if the reported conduct had
30 occurred within the home state. In taking action under this subsection, the licensing board of the home state shall

1 apply its own state laws to determine appropriate action.

2 (5) The home state may take adverse action based on the factual findings of the remote state, as long
3 as each state follows its own procedures for imposing an adverse action.

4 (6) (a) Nothing in this compact may override a party state's decision that participation in an alternative
5 program may be used in lieu of a licensure action and must remain a nonpublic record if required by the party's
6 state laws.

7 (b) Party states shall require nurses who enter any alternative program to agree not to practice in any
8 other party state during the term of the alternative program without prior authorization from the other party state.

9

10 **NEW SECTION. Section 7. Additional authorities invested in party state licensing boards.**

11 Notwithstanding any other powers, party state licensing boards have the authority to:

12 (1) if otherwise permitted by state law, recover from the affected nurse the costs of investigations and
13 disposition of cases resulting from an adverse action taken against that nurse;

14 (2) issue subpoenas for both investigations and hearings that require the attendance and testimony of
15 witnesses and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the
16 attendance and testimony of witnesses or the production of evidence from another party state must be enforced
17 in the latter state by a court of competent jurisdiction, according to the practice and procedure of that court
18 applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness
19 fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses
20 or evidence is located.

21 (3) issue cease and desist orders to limit or revoke a nurse's authority to practice in their state; and

22 (4) promulgate uniform rules as provided for in [section 9(3)].

23

24 **NEW SECTION. Section 8. Coordinated licensure information system.** (1) All party states shall
25 participate in a cooperative effort to create a coordinated database of all licensed registered nurses and licensed
26 practical nurses or vocational nurses. This coordinated licensure information system includes information on the
27 licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of
28 nurse licensure and enforcement efforts.

29 (2) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report
30 adverse actions, actions against multistate licensure privileges, any current significant investigative information

1 yet to result in adverse action, denials of applications, and the reasons for a denial to the coordinated licensure
2 information system.

3 (3) Current significant investigative information may be transmitted through the coordinated licensure
4 information system only to party state licensing boards.

5 (4) Notwithstanding any other provision of law, all party states' licensing boards contributing information
6 to the coordinated licensure information system may designate information that may not be shared with nonparty
7 states or disclosed to other entities or individuals without the express permission of the contributing party state.

8 (5) Any personally identifiable information obtained by a party state's licensing board from the
9 coordinated licensure information system may not be shared with nonparty states or disclosed to other entities
10 or individuals except to the extent permitted by the laws of the party state contributing the information.

11 (6) Any information contributed to the coordinated licensure information system that is subsequently
12 required to be expunged by the laws of the party state contributing that information must also be expunged from
13 the coordinated licensure information system.

14 (7) The compact administrators, acting jointly with each other and in consultation with the administrator
15 of the coordinated licensure information system, shall formulate necessary and proper procedures for the
16 identification, collection, and exchange of information under this compact.

17
18 **NEW SECTION. Section 9. Compact administration and exchange of information.** (1) The head
19 of the licensing board, or a designee, of each party state is the administrator of this compact for that party state.

20 (2) The compact administrator of each party state shall furnish to the compact administrator of each other
21 party state any information and documents, including but not limited to a uniform data set of investigations,
22 identifying information, licensure data, and disclosable alternative program participation information to facilitate
23 the administration of this compact.

24 (3) Compact administrators have the authority to develop uniform rules to facilitate and coordinate
25 implementation of this compact. These uniform rules must be adopted by party states, under the authority
26 invested under [section 7(4)].

27
28 **NEW SECTION. Section 10. Immunity.** A party state or the officers or employees or agents of a party
29 state's licensing board who act in accordance with the provisions of this compact are not liable on account of any
30 act or omission in good faith while engaged in the performance of their duties under this compact. "Good faith"

1 as used in this section does not include willful misconduct, gross negligence, or recklessness.

2

3 **NEW SECTION. Section 11. Entry into force, withdrawal, and amendment.** (1) (a) This compact
4 enters into force and becomes effective as to any state when it has been enacted into the laws of that state.

5 (b) A party state may withdraw from this compact by enacting a statute repealing this compact. A
6 withdrawal may not take effect until 6 months after the withdrawing state has given notice of the withdrawal to
7 the executive heads of all other party states.

8 (2) A withdrawal may not affect the validity or applicability by the licensing boards of states remaining
9 party to the compact of any report of adverse action occurring prior to the withdrawal.

10 (3) Nothing contained in this compact may be construed to invalidate or prevent any nurse licensure
11 agreement or other cooperative arrangement between a party state and a nonparty state that is made in
12 accordance with the other provisions of this compact.

13 (4) This compact may be amended by the party states. An amendment to this compact may not become
14 effective and binding upon the party states until it is enacted into the laws of all party states.

15

16 **NEW SECTION. Section 12. Construction and severability.** (1) (a) This compact must be liberally
17 construed so as to effectuate the purposes of this compact.

18 (b) The provisions of this compact are severable, and if any phrase, clause, sentence, or provision of
19 this compact is declared to be contrary to the constitution of any party state or of the United States or if the
20 applicability of any phrase, clause, sentence, or provision of this compact is held invalid, the validity of the
21 remainder of the compact and its applicability to any government, agency, person, or circumstance may not be
22 affected.

23 (c) If this compact is held contrary to the constitution of a party state, the compact remains in effect as
24 to the remaining party states and in effect as to the affected party state as to all severable matters.

25 (2) (a) If a party state finds a need for settling disputes arising under this compact, the party states may
26 submit the issues in dispute to an arbitration panel that is composed of an individual appointed by the compact
27 administrator in the home state, an individual appointed by the compact administrator in the remote state involved,
28 and an individual mutually agreed upon by the compact administrators of each of the party states involved in the
29 dispute.

30 (b) The decision of a majority of the arbitrators is final and binding.

1
2 **NEW SECTION. Section 13. Relation to other statutes.** This compact is designed to facilitate the
3 regulation of nurses and does not relieve employers from complying with other or additional statutorily imposed
4 obligations.

5
6 **NEW SECTION. Section 14. Compact administrator.** The "head of the licensing board" as used to
7 define the compact administrator described in [section 9(1)] means the presiding officer of the Montana board
8 of nursing or a designee of the presiding officer.

9
10 **Section 15.** Section 37-8-103, MCA, is amended to read:

11 **"37-8-103. Exemptions -- limitations on authority conferred.** (1) This chapter may not be construed
12 as prohibiting:

- 13 (a) gratuitous nursing by friends or members of the family;
14 (b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;
15 (c) nursing assistance in the case of an emergency;
16 (d) the practice of nursing by students enrolled in approved nursing education programs;
17 (e) the practice of nursing in this state by any legally qualified nurse of another state;
18 (i) whose engagement requires the nurse to accompany and care for a patient temporarily residing in this
19 state during the period of one engagement not to exceed 6 months in length, provided that the person does not
20 represent to the public that the person is a nurse licensed to practice in this state; or
21 (ii) whose home state of licensure is a party state to the nurse licensure compact provided for in [sections
22 1 through 14];
23 (f) the practice of any legally qualified nurse of another state who is employed by the United States
24 government or any bureau, division, or agency of the United States while in the discharge of that nurse's official
25 duties;
26 (g) nursing or care of the sick, with or without compensation, when done in connection with the practice
27 of the religious tenets of any well-established religion or denomination by adherents of the religion or
28 denomination;
29 (h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent that the
30 care may be provided by a parent or guardian;

- 1 (i) the execution of a death sentence pursuant to 46-19-103;
- 2 (j) nursing tasks delegated by licensed nurses to unlicensed persons according to rules adopted by the
3 board; and
- 4 (k) the provision of nutrition, inclusive of supplements and medications prescribed by a physician, an
5 advanced practice registered nurse, or a physician assistant, to be administered to an individual through a
6 gastrostomy or jejunostomy tube by a parent, guardian, foster parent, surrogate parent, other family member, or
7 individual, regardless of compensation, who is authorized and trained by the individual receiving the nutrition,
8 inclusive of supplements and prescribed medications, or who is authorized and trained by a parent, guardian,
9 foster parent, surrogate parent, or other adult family member. The exemption in this subsection (1)(k) does not
10 apply to provision of nutrition, inclusive of supplements and prescribed medications, in a licensed facility that
11 provides skilled nursing care as provided in Title 50, chapter 5.
- 12 (2) This chapter may not be construed:
- 13 (a) as conferring any authority to practice medicine, surgery, or any combination of medicine or surgery;
- 14 (b) to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state
15 of Montana; or
- 16 (c) to permit any person to undertake the treatment of disease by any of the methods employed in the
17 healing arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those
18 professions or healing arts in the state of Montana.
- 19 (3) (a) This chapter may not be construed to apply to a personal assistant performing health
20 maintenance activities and acting at the direction of a person with a disability.
- 21 (b) The following definitions apply to this subsection:
- 22 (i) "Health care professional" means an individual licensed pursuant to Title 37 as a physician assistant,
23 advanced practice registered nurse, registered nurse, or occupational therapist or a medical social worker
24 working as a member of a case management team for the purposes of the home- and community-based services
25 program of the department of public health and human services.
- 26 (ii) "Health maintenance activities" includes urinary systems management, bowel treatments,
27 administration of medications, and wound care if the activities in the opinion of the physician or other health care
28 professional for the person with a disability could be performed by the person if the person were physically
29 capable and if the procedure may be safely performed in the home.
- 30 (iii) "Physician" means an individual licensed pursuant to Title 37, chapter 3."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Section 16. Section 37-8-421, MCA, is amended to read:

"37-8-421. Temporary practice permit. (1) ~~The~~ Except as provided in subsection (4), the board shall issue a temporary practice permit to an individual licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that:

(a) the applicant has submitted a completed application as approved by the board;

(b) the initial screening by the board staff shows no current disciplinary action as identified by the board by rule; and

(c) there is no reason to deny a temporary practice permit under the laws of this state governing the practice of nursing.

(2) The individual may practice under a temporary practice permit until a license is granted, until a notice of proposal to deny a temporary practice permit is issued, or until the period of time adopted by the board by rule expires.

(3) A nurse who is employed under a temporary practice permit may function only under the supervision of a registered professional nurse, physician, dentist, osteopath, or podiatrist who is on the premises where and when the permittee is working and who is specifically assigned the responsibility of supervising the performance of the temporary practice permittee.

(4) A nurse licensed in a state participating in the nurse licensure compact provided for in [sections 1 through 14] may practice under the terms of the compact without obtaining a temporary practice permit under this section."

NEW SECTION. Section 17. Codification instruction. [Sections 1 through 14] are intended to be codified as an integral part of Title 37, chapter 8, and the provisions of Title 37, chapter 8, apply to [sections 1 through 14].

NEW SECTION. Section 18. Two-thirds vote required. Because [section 10] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

NEW SECTION. Section 19. Effective date. [This act] is effective July 1, 2008.

- END -